

Federal Register

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Part II

**Department of
Agriculture**

**Animal and Plant Health Inspection
Service**

**9 CFR Parts 1 and 2
Animal Welfare; Proposed Rules**

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****9 CFR Part 1****[Docket No. 84-027]****Animal Welfare; Definition of Terms****AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Proposed rule.

SUMMARY: This document proposes to amend Part 1—"Definition of Terms." The changes comply with the amendments to the Animal Welfare Act (7 U.S.C. 2131 et seq.) contained in Pub. L. 99-198, "The Food Security Act of 1985" enacted December 23, 1985. This proposal would also expand the list of definitions in order to facilitate enforcement of the Act and the regulations and to inform the public of the Act's requirements. These proposed amendments complement the changes the Agency is proposing to Parts 2 and 3, some of which are also required by Pub. L. 99-198.

DATE: Written comments must be received on or before June 1, 1987, and should refer to Docket 84-027.

ADDRESS: Written comments concerning this proposal should be submitted to Dr. R.L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 756 of the Federal Building, 8 a.m. to 4 p.m., Monday to Friday except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, telephone (301) 436-7833.

SUPPLEMENTARY INFORMATION:**Background**

This document proposes to amend and expand 9 CFR Part 1, entitled "Definition of Terms" which provides the definitions for the regulations in 9 CFR Part 2, and the standards in 9 CFR Part 3 for the humane handling, care, treatment, and transportation of regulated animals used for research or exhibition purposes, sold as pets, or transported in commerce. The Definitions, Regulations, and Standards are established pursuant to the authority in the Animal Welfare Act, as amended (U.S.C. 2131 et seq.). This law requires the Secretary to promulgate regulations and standards governing the humane

handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, carriers, and intermediate handlers. The standards and regulations must include minimum requirements with respect to handling, housing, feeding, sanitation, veterinary care, and other matters specified in section 13 of the Act (7 U.S.C. 2143). These definitions will provide proper guidance to the public, licensees, and registrants in their responsibilities under the Act.

Many of the presently existing definitions have been expanded, reworded, or revised based on the experience the Agency has gained in administering the Act. The Department solicits comments and recommendations concerning these proposed definitions.

The definitions proposed in this document have been organized alphabetically so users may more easily locate a particular term.

The proposed amendments to the "Definitions" are as follows:

The term "ambient temperature" has been added to define better the areas of temperature restrictions for animal housing and transportation.

The term "animal" has been reworded to include the term "teaching." All warmblooded animals are covered by the Act, however, the Department will still exclude from regulation poultry and birds, laboratory-bred species of rats and mice, farm animals, and other animals used solely for food or fiber (fur), or as pack or work animals.

The term "animal act" has been added to identify and differentiate exhibitors with performing animals from mere exhibited animals.

The term "attending veterinarian" has been reworded to indicate that the veterinarian has direct or delegated responsibilities for activities involving animals at licensed and registered facilities. This includes not only the treatment of sick or injured animals, but also programs of nutrition, preventive medicine (vaccinations), internal and external parasite control, euthanasia, and general sanitation and animal husbandry practices. In the case of research facilities, he/she is also responsible for evaluating the type and amount of anesthetic, analgesic, and tranquilizing drugs used on animals during actual research, testing, or experiments, including pre- and post-procedural care, where appropriate, to relieve unnecessary pain and distress in the subject animals. It is also proposed that the "attending veterinarian" demonstrate the acquisition of training or experience in the care and management of the species being

attended, and that the veterinarian be accredited by the U.S. Department of Agriculture in accordance with regulation to be issued under the Animal Welfare Act.

The term "business hours" has been added as that term is used in the standards. This term will apply to all licensees and registrants regardless of their type of operation (part-time, full-time, or seasonal operation).

The term "cat" has been reworded so as to include hybrid crosses.

The term "class 'A' dealer" has been reworded to clarify the limitations of a class A license. The term "class 'B' licensee" has been reworded to clarify the requirements for a class B licensee. A class "B" licensee includes those persons who operate as brokers and as operators of auction sales. Although a broker or an operator of an auction sale does not usually take actual physical possession of the animals and does not usually hold animals in any facilities, he does negotiate or arrange for their sale in commerce and is, therefore, a class "B" licensee. A class "B" licensee is also allowed to exhibit animals as a minor part of the business. The term "class 'C' licensee" has been reworded to clarify the requirements for a class C exhibitor's license and to indicate that a class "C" exhibitor is allowed to buy and sell animals, as a minor part of his business, or to maintain his animal collection. The type of license (B or C) is determined by the applicant's primary business.

The term "commerce" has been reworded to indicate that intrastate activities are considered to be in commerce for the purposes of the Act.

The term "committee" has been added and describes the Institutional Animal Care and Use Committee required by the 1985 amendments to the Act.

The term "dealer" has been reworded to define those persons requiring a dealer's license and to specify certain areas and operations which are excluded or exempted from licensing requirements. The term "dealer" includes brokers and operators of auction sales selling animals other than domestic livestock (horses, cattle, sheep, goats, and pigs) and poultry. The term "dealer" also includes anyone selling any parts of an animal, such as unborn animals, organs, limbs, blood, serum, or other parts. This term is not intended to include the following types of operations: (1) Any retail outlet which meets the definition of a "retail pet store" as defined in this part; or (2) any person who sells no more than \$500 worth of animals other than dogs or cats

or wild or exotic animals in any calendar year.

In addition, APHIS has determined that the following persons derive less than a substantial portion of their income from dealer activities and thus need not obtain a license: (1) Any person who maintains a total of three (3) or fewer breeding female dogs or cats per household or premises and who sells the offspring of such dogs or cats, which were born and raised on their premises, for pets or exhibition purposes; or (2) any person who sells fewer than 25 dogs or cats per year, which were born and raised on their premises, for research purposes or to any research facility; or (3) any person who arranges for transportation or transports animals only for the purposes of breeding, exhibiting in purebred shows, boarding (not in association with commercial transportation), grooming, or medical treatment; or (4) any person who buys, sells, transports, or negotiates the sale, purchase, or transportation of any animals used only for the purposes of food or fiber (fur); or (5) any person who breeds and raises domestic pet animals (as indicated in the definition of retail pet store) for direct retail sales to others for their own use and who buys no animals for resale and who sells no animals to a research facility, an exhibitor, a dealer, or a pet store (such as a purebred dog or cat fancier); or (6) any person who buys animals only for his own use or enjoyment and does not sell or exhibit animals or otherwise qualify for licensing. These exclusions will be included in the licensing regulations in 9 CFR Part 2. The sale of wild or exotic animals or the wholesale of other animals always requires a license.

The term "dog" has been reworded to include dog hybrid crosses.

A definition of "endangered species" has been added.

The term "euthanasia" has been changed to define humane destruction of an animal. The method of euthanasia used should be one which is consistent with the recommendations of the American Veterinary Medical Association's current Panel on Euthanasia or one which is approved, in writing, by the Area Veterinarian in Charge for specific instances. Exceptions to these recommended methods of euthanasia in research facilities would have to be justified in the research protocol and approved by the attending veterinarian and the Institutional Animal Care and Use Committee.

The definition of "exhibitor" has been reworded to identify those persons who are required to obtain a license as an

exhibitor. Although the definition of exhibitor includes certain exemptions in regard to State and county fairs and the advancement of agricultural arts and sciences, any animal exhibits at State and county fairs, livestock shows, rodeos, or the like, that are not domestic livestock and do not have the purpose of advancing agricultural arts and sciences, such as petting zoos utilizing dogs, cats, guinea pigs, or rabbits, for example, or clown acts with dogs or monkeys and animal prizes given by games of chance, must obtain a license as an exhibitor under the Act. The term "exhibitor," as defined in the Act, also has an exclusion for retail pet stores. A "retail pet store" has been defined in this part. Any pet store which exhibits any animal(s) other than pet animals will be required to obtain a license as an exhibitor. If such animals are sold, the pet store will be required to have a dealer's license.

The term "exotic animal" has been added to indicate that these are animals which are not normally found in the United States, either as domesticated or wild animals. Dealers and exhibitors of exotic animals must obtain a license under the Act.

The term "farm animal" has been reworded to identify what animals are farm animals and specifically to include certain animals if used for purposes of food, fiber, or work only.

The terms "Federal agency," "Federal award," and "Federal research facility," were defined by the 1985 amendments to the Act and have been added to the definitions.

The term "handling" is being removed from Part 3, Subparts E and F (§§ 3.111 and 3.135), and added to the definitions in this part and to the Regulations in Part 2. This is being done in order to apply the same requirements to all covered animals and to eliminate repetitive standards from each of the subparts in Part 3.

The term "housing facility" has been added to define the areas covered by such term which are subject to inspection and compliance with the regulations and standards. This definition is broad in scope and covers the land immediately surrounding an animal facility and any accumulation of junk, trash, or weeds thereon that might harbor or conceal various pests such as rats, mice, mosquitoes, and flies or that might be potentially harmful to the animals.

Over the past few years, new types of animal dealer operations have become more prevalent whereby domestic animals are crossed with wild or exotic animals, such as dogs crossed with wolves and buffalo crossed with

domestic cattle, with the offspring being sold for various purposes. There has been discussion between the Agency and the industry whether such hybrid cross animals should be considered wild or domestic animals for purposes of the Act. The general consensus within the Agency has been that such hybrid cross animals should be considered to be domesticated animals. An additional problem is that there is no way to prove if an animal is $\frac{3}{4}$ or $\frac{1}{2}$ wild or domestic, nor can such a decision be made by observing the animal. Even if such categories could be proven, the problem would still remain as to where the line should be drawn between a wild animal and a domestic animal. Therefore, for the purposes of the Act, the term "hybrid cross" has been added to the definitions and such a cross is determined to be a domestic animal.

The standards require impervious surfaces in animal facilities but do not define this term. APHIS has issued memorandums explaining and defining this term, but these have not always received wide distribution in the field and are not generally available to the public. The term "impervious surface" has now been added to the definitions. In order for building surfaces and enclosure surfaces to be impervious to moisture, the construction material must be composed of, or treated with, a material which is nonpermeable, nonporous, and is incapable of being penetrated by moisture or fluids. Nontoxic paints, varnish, shellac, plastic type coatings, sealed cement, metal and plastics are acceptable surfaces if maintained in good condition. Untreated wood or wood coated with whitewash or linseed oil is not acceptable nor are any substances that do not cause such surfaces to be impervious or that are not well maintained so as to be impervious. Exceptions to these provisions may be permitted if provided for in an approved protocol, e.g., for simulation of a natural environment.

Whether an animal facility should be classified as an indoor housing facility or an outdoor housing facility has not been completely understood. To correct this situation, the term "indoor housing facility" has been reworded to spell out the requirements that must be met in order to be classified as such a facility. The term "outdoor housing facility" has also been reworded to define this type of facility. Outdoor housing facilities would be restricted to: (1) Outside pens or runs with dog houses; (2) outside pens or paddocks with enclosed or partly enclosed sheds or shelters; or (3) animals maintained on a tether with a shed or dog house available. In addition

a third type of animal housing facility, "sheltered housing facility," has been added to the definitions and will be added to the standards in Part 3. A "sheltered housing facility" will have requirements that will fall between those of an "indoor housing facility" and an "outdoor housing facility." The inside or sheltered part of the facility should be able to maintain temperatures above 35° F (1.7° C); must provide additional ventilation, such as fans, when temperatures in the sheltered area exceed 95° F (35° C); and the shelter part must be available to the animals at all times. This type of facility would include runs or pens in a totally enclosed barn or building or connecting inside/outside runs or pens with the inside pens in a totally enclosed building. This definition is intended to assist the public in understanding how an animal housing facility should be classified.

The term "intermediate handler" has been revised. The new definition is not intended to include any person who transports or arranges for transportation of animals solely for the purposes of: (1) Purebred breeding, (2) dog and cat shows, (3) boarding not in association with transport in commerce, (4) grooming, or (5) veterinary care. All other aspects of transportation are regulated.

The veterinary care standards and acceptable husbandry practices for marine mammals require isolation of new or sick animals from resident animals; however, isolation was not defined in the regulations or standards. The term "isolation" has, therefore, been added to the definitions in regard to marine mammals.

The term "licensed veterinarian" has been reworded so as to include the requirement that the veterinarian must be licensed in a State and has received formal training.

The 1985 amendments restrict the number of times that an animal may be used for survival surgery in major operative experiments. In order to effect this requirement, the term "major operative experiment" has been added to the definitions.

The 1985 amendments to the Act require that steps be taken to reduce or eliminate the use of painful procedures in research animals. In the next to last paragraph of the "Joint Explanatory Statement of the Committee of Conference," as published in the House Congressional Record on December 17, 1985, the conferees indicated that their intent was to reduce or eliminate pain other than slight or momentary pain, such as that caused by injections or other minor procedures. The 1985 amendments to the Act reflect

Congressional concern with the infliction of pain and the use of painful procedures on laboratory animals. They require that research facility personnel seriously review painful procedures to determine if they are necessary to obtain the scientific objective. Accordingly, the term "painful procedure" has been added to the list of definitions.

APHIS is defining the term "pet animal" as animals which have normally been kept by households in the United States as family pets and are considered to be easily handled and relatively nondangerous. Pet stores which sell any animal not deemed to be a "pet animal" must obtain a dealer's license.

Over the years there has been some disagreement over what constitutes the term "primary enclosure." This term has been reworded and includes some examples.

The term "protocol" has been defined as the investigator's plan for the use of animals in the context of the investigator's research. The 1985 amendments provide for exceptions to the regulations and standards if such exceptions are justified in the protocol and approved by the Committee. The 1985 amendments to the Act require research facilities to establish Institutional Animal Care and Use Committees and set certain responsibilities and duties for the committees. The amendments state that a quorum is required for all formal actions of the committee and define "quorum" as "a majority of committee members." The term "quorum" is, therefore, added to the list of definitions as defined in the amendments.

The term "random source" has been added to the definitions to differentiate dogs and cats obtained from pounds, shelters, and persons who did not breed and raise them, from dogs and cats bred specifically for use in research facilities and those that are obtained from a known legal source. This definition is intended to facilitate enforcement of the Act against dealers and research facilities unlawfully buying or selling such animals. The term "random source" is, therefore, defined and added to the list of definitions.

The term "research facility" has been reworded to clarify the structure and meaning of the paragraph and the permitted exemption from registration. The use of animals for teaching has also been included in the definitions to clarify the intent of Congress that animals used for teaching purposes are regulated under the Act as are those used for testing, experiments, or research. The committee hearings for the

original Laboratory Animal Welfare Act in 1966 (Pub. L. 89-544) and the amendments in 1970 (Pub. L. 91-579) specifically indicated that animals used for teaching were to be included under the term research. The term "teaching" was never made part of the definition of a research facility but the intent has been carried out in program enforcement. This has caused some confusion over the years which would be corrected by this new definition.

The Animal Welfare Act, as amended, (7 U.S.C. 2131 *et seq.*) provides for certain exemptions for a "retail pet store" under the definitions of a dealer and an exhibitor. The term "retail pet store" has been revised to clarify the circumstances under which such a store must obtain a license. Any retail pet store selling or exhibiting any animal(s) other than those listed as a "pet animal" would require a license as a class "B" dealer or a class "C" exhibitor.

The term "transporting vehicle" has been added to the definitions in regard to the transportation of animals. Although the term "primary conveyance" means basically the same thing, the term "transporting vehicle" has been added to assist the public in understanding the regulations.

The term "wild animal" has been added, along with the term "exotic animal," to define better those animals regulated under the Act. The habitat for some animals in the wild state is rapidly diminishing and many of these animals are more readily found in captivity than in nature. These definitions are an effort to adapt to changing circumstances and to clarify the types of animals included under each definition.

The Act specifies, under the definition of "exhibitor," that carnivals, circuses, and zoos exhibiting animals must be licensed whether operated for profit or not. The term "zoo" has been added to the list of definitions. This definition is broad in scope and is intended to include any stationary or semistationary display of animals to the public regardless of compensation.

Comments

Written comments are solicited for 60 days after publication of this document in the *Federal Register* and should refer to Docket number 84-027.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and Secretary's Memorandum No. 1512-1, and has been determined not to be a "major rule." Based on information available to the Department, it has been determined that this proposal would not have a significant effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies, or geographic regions; and would not cause adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Alternatives were considered with respect to this proposal.

Consideration was given to add only the definitions mandated by the amendments to the Animal Welfare Act as indicated in Pub. L. 99-198, the "Food Security Act of 1985." It was determined that new definitions should be added and existing definitions reworded and revised, so as to assist the public in understanding the requirements of the regulations and standards.

It is not anticipated that the adoption of the proposed changes would have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Many of the proposed changes would ease the burden and lessen the impact of regulation on all small entities within the regulated industry.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 1

Animal welfare, Animal housing, Dealers, Exhibitors, Research facilities, Humane animal handling.

Accordingly, we propose to amend 9 CFR as follows:

Part 1 is revised to read as follows:

PART 1—DEFINITION OF TERMS

Authority: 7 U.S.C. 2133, 2135, 2136, 2140, 2141, 2142, 2143, 2144, 2146, 2147, 2151; 7 CFR 2.17, 2.51, and 371.2(d).

§ 1.1 Definitions.

For the purposes of this subchapter, unless the context otherwise requires, the following terms shall have the meanings assigned to them in this section. The singular form shall also signify the plural and the masculine form shall also signify the feminine. Words undefined in the following paragraphs shall have the meaning attributed to them in general usage as reflected by definitions in a standard dictionary.

Act means the Act of August 24, 1966 (Pub. L. 89-544), (commonly known as the Laboratory Animal Welfare Act), as amended by the Act of December 24, 1970 (Pub. L. 91-579), (the Animal Welfare Act of 1970), the Act of April 22, 1976 (Pub. L. 94-279), (the Animal Welfare Act Amendments of 1976), and the Act of December 23, 1985 (Pub. L. 99-198), (the Food Security Act of 1985), and as it may be subsequently amended.

Administrator means the Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or any other official of the Animal and Plant Health Inspection Service to whom authority has been delegated to act in his stead.

Ambient temperature means the air temperature surrounding the animal.

Animal means any live or dead dog, cat, monkey (nonhuman primate), guinea pig, hamster, rabbit, or any other warmblooded animal, which is being used or is intended for use for research, teaching, testing, experimentation, or exhibition purposes, or as a pet. This term excludes: Birds, rats, and mice and horses and other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With respect to a dog, the term means all dogs including those used for hunting, security, or breeding purposes.

Animal act means any performance of animals where such animals are trained to perform some behavior or action or are part of a show, performance, or exhibition.

Area Veterinarian in Charge means a veterinarian or his designee employed by APHIS, Veterinary Services, who is assigned by the Deputy Administrator to supervise and perform the official work of Veterinary Services in a given State

or States. As used in Part 2 of this subchapter, the Area Veterinarian in Charge shall be deemed to be the person in charge of the official work of Veterinary Services in the State in which the dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale has his principal place of business.

Attending veterinarian means a person who has graduated from a veterinary school accredited by the American Veterinary Medical Association's Council on Education or has a certificate issued by the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates, has received training and/or experience in the care and management of the species being attended, and who has direct or delegated responsibility for activities involving animals at a registered or licensed facility. The veterinarian must be accredited by the U.S. Department of Agriculture in accordance with regulations issued under the Animal Welfare Act.

Business hours means the hours between 7 a.m. and 7 p.m., Monday through Friday, except for legal Federal holidays, each week of the year.

Business year means the 12-month period during which business is conducted, and may be either on a calendar or fiscal-year basis.

Carrier means the operator of any airline, railroad, motor carrier, shipping line, or other enterprise which is engaged in the business of transporting any animals for hire.

Cat means any live or dead cat (*Felis catus*) or any cat-hybrid cross.

Class "A" licensee (breeder) means a person subject to the licensing requirements under Part 2 whose business involving animals consists only of animals that are bred and raised on the premises in a closed or stable colony and those animals acquired for the sole purpose of maintaining or enhancing the breeding colony.

Class "B" licensee (dealer) means a person subject to the licensing requirements under Part 2 and meeting the definition of a "dealer" (§ 1.1(q)) and whose business includes the purchase and/or resale of any animal. This term includes brokers, and operators at an auction sale, as such individuals negotiate or arrange for the purchase, sale, or transport of animals in commerce. Such individuals do not usually take actual physical possession or control of the animals, and do not usually hold animals in any facilities. A class "B" licensee may also exhibit animals as a minor part of the business.

Class "C" licensee (exhibitor) means a person subject to the licensing requirements under Part 2 and fitting the definition of an "exhibitor" (§ 1.1(x)) whose business involves the showing or displaying of animals to the public. A class "C" licensee may buy and sell animals as a minor part of the business in order to maintain or add to his animal collection.

Commerce means trade, traffic, transportation, or other commerce—

(1) Between a place in a State and any place outside of such State, including any foreign country, or between points within the same State but through any place outside thereof, or within any territory, possession, or the District of Columbia; or

(2) Which affects the commerce described in this part.

Committee means the Institutional Animal Care and Use Committee established under section 13(b) of the Act. It shall consist of at least three (3) members, one of whom is the attending veterinarian of the research facility and one of whom is not affiliated in any way with the facility other than as a member of the committee. The research facility shall establish the Committee for the purpose of evaluating the care, treatment, housing, and use of animals, and for certifying compliance with the Act by the research facility.

Dealer means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation, exhibition, or for use as a pet; or any dog for hunting, security, or breeding purposes. This term does not include: A retail pet store, as defined in this section, unless such store sells any animals to a research facility, an exhibitor, or a dealer (wholesale); or any person who does not sell, or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than \$500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats, during any calendar year.

Department means the U.S. Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Veterinary Services or any other official of Veterinary Services to whom authority has been delegated to act in his stead.

Dog means any live or dead dog (*Canis familiaris*) or any dog-hybrid cross.

Dwarf hamster means any species of hamster such as the Chinese and Armenian species whose adult body size is substantially less than that attained by the Syrian or Golden species of hamsters.

Endangered species means those species defined in the Endangered Species Act (16 U.S.C. 1531 *et seq.* and as it may be subsequently amended).

Euthanasia means the humane destruction of an animal accomplished by a method which produces instantaneous unconsciousness and immediate death without evidence of pain or distress, or a method that utilizes anesthesia produced by an agent which causes painless loss of consciousness and subsequent death.

Exhibitor means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary. This term includes carnivals, circuses, animal acts, zoos, and educational exhibits, exhibiting such animals whether operated for profit or not. This term excludes retail pet stores, horse and dog races, organizations sponsoring and all persons participating in State and county fairs, livestock shows, rodeos, field trials, coursing events, purebred dog and cat shows and any other fairs or exhibitions intended to advance agricultural arts and sciences as may be determined by the Secretary.

Exotic animal means any animal that is native to a foreign country or of foreign origin or character, is not native to the United States, or was introduced from abroad. This term specifically includes animals such as, but not limited to, lions, tigers, leopards, elephants, camels, llamas, antelope, anteaters, kangaroos, and water buffalo. Species of foreign domestic cattle, such as, Ankole, Gayal, Yak are included in this group.

Farm animal means any domestic species of cattle, sheep, swine, goats, or horses, which are normally and have historically, been kept and raised on farms in the United States, and used or intended for use as food or fiber. This term also includes animals such as rabbits, mink, and chinchilla, when they are used solely for purposes of meat or fur, and animals such as horses and llamas when used solely as work or pack animals.

Federal agency means an Executive agency as such term is defined in section 105 of Title 5, United States Code, and with respect to any research facility means the agency from which the research facility receives a Federal award for the conduct of research,

experimentation, or testing involving the use of animals.

Federal award means any mechanism (including a grant, award, loan, contract, or cooperative agreement) under which Federal funds are used to support the conduct of research, experimentation, or testing, involving the use of animals. The permit system established under the authorities of the Endangered Species Act, the Marine Mammal Protection Act, and the Migratory Bird Treaty Act, are not considered to be Federal awards under the Animal Welfare Act.

Federal research facility means each department, agency, or instrumentality of the United States which uses live animals for research or experimentation.

Handling means petting, feeding, watering, cleaning, manipulating, loading, crating, shifting, transferring, immobilizing, restraining, treating, training, working and moving, or any similar activity with respect to any animal.

Housing facility means any land, premises, shed, barn, building, trailer, or other structure or area housing or intended to house animals.

Hybrid cross means an animal resulting from the crossbreeding between two different species or types of animals. Crosses between wild animal species, such as lions and tigers, are considered to be wild animals. Crosses between wild animal species and domestic animals, such as dogs and wolves or buffalo and domestic cattle, are considered to be domestic animals.

Impervious surface means a surface that does not permit the absorption of fluids. Fluids on such surfaces will bead or run off, and such surfaces will allow thorough and repeated cleaning and disinfecting, and will not retain odors.

Indoor housing facility means any structure or building with environmental controls housing or intended to house animals and meeting the following three requirements:

(1) It must be capable of controlling the temperature within the building or structure within the limits set forth for that species of animal, of maintaining humidity levels of 30 to 70 percent and of rapidly eliminating odors from within the building; and

(2) It must be an enclosure created by the continuous connection of a roof, floor, and walls (a shed or barn set on top of the ground does not have a continuous connection between the walls and the ground unless a foundation and floor are provided); and

(3) It must have at least one door for entry and exit that can be opened and closed (any windows or openings which provide natural light must be covered

with a transparent material such as glass or hard plastic).

Intermediate handler means any person, including a department, agency, or instrumentality of the United States or of any State or local government (other than a dealer, research facility, exhibitor, any person excluded from the definition of a dealer, research facility, or exhibitor, an operator of an auction sale, or a carrier), who is engaged in any business in which he receives custody of animals in connection with their transportation in commerce.

Isolation in regard to marine mammals means the physical separation of animals to prevent contact and a separate, noncommon, water circulation and filtration system for the isolated animals.

Licensed veterinarian means a Doctor of Veterinary Medicine who has graduated from an accredited school of veterinary medicine and who has a valid license to practice veterinary medicine in some State.

Licensee means any person licensed according to the provisions of the Act and the regulations in Part 2 of this subchapter.

Major operative experiment means any surgical intervention that penetrates and exposes a body cavity or that has the potential for producing a permanent disability.

Minimum horizontal dimension (MHD) means the diameter of a circular pool of water, or in the case of a square, rectangle, oblong, or other shape pool, the diameter of the largest circle that can be inserted within the confines of such a pool of water.

Nonconditioned animals means animals which have not been subjected to special care and treatment for sufficient time to stabilize, and where necessary, to improve their health.

Nonhuman primate means any nonhuman member of the highest order of mammals including prosimians, monkeys, and apes.

Operator of an auction sale means any person who is engaged in operating an auction at which animals are purchased or sold in commerce.

Outdoor housing facility means any structure, building, land, or premise, housing or intended to house animals, which does not meet the definition of an indoor housing facility or a sheltered housing facility and in which temperatures cannot be controlled within set limits.

Painful procedure as applied to any animal means any procedure that would reasonably be expected to cause more than slight or momentary pain or distress in a human being to which that procedure was applied, that is, pain in excess of that caused by injections or other minor procedures.

Person means any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity.

Pet animal means any animal that has commonly been kept as a pet animal in family households in the United States.

Primary conveyance means the main method of transportation used to convey an animal from origin to destination, such as a motor vehicle, plane, ship, or train.

Primary enclosure means any structure or device used to restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment, pool, hutch, or chain. In the case of animals restrained by a chain (e.g., dogs on chains), it includes the shelter and the area within reach of the chain.

Protocol means an investigator's plan for the use of animals in a study of a biomedical problem.

Quorum means a majority of the Committee members.

Random source means dogs and cats obtained from animal pounds or shelters, auction sales, or from any person who did not breed and raise them on their premises.

Registrant means any research facility, carrier, intermediate handler, or exhibitor not required to be licensed under section 3 of the Act, registered pursuant to the provisions of the Act and the regulations in Part 2 of this subchapter.

Research facility means any school (except an elementary or secondary school), institution, organization, or person who uses or intends to use live animals in research, tests, experiments, or teaching, and that: Purchases or transports live animals in commerce, or receives funds under a grant, award, loan, or contract from a Department, agency, or instrumentality of the United States for the purpose of carrying out research, tests, experiments, or teaching. A school, institution, organization, or person who does not use or intend to use live dogs or cats may be exempted by the Administrator, upon application to him in specific cases and upon his determination that such exemption does not vitiate the purpose of the Act. The Administrator will not exempt any school, institution, organization, or person who, in the opinion of the Administrator, uses substantial numbers of live animals where the principal function of such school, institution, organization, or person, is biomedical research, testing, or teaching.

Retail pet store means any outlet where only the following animals are sold or offered for sale, at retail, for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gopher, mink, chinchilla, domestic ferrets,

domestic farm animals, birds, and coldblooded species. Such definition excludes—

(1) Establishments or persons who deal in dogs used for hunting, security or breeding purposes;

(2) Establishments or persons selling or offering to sell any wild or exotic or other nonpet species of warmblooded animals (except birds), such as, skunks, raccoons, nonhuman primates, squirrels, ocelots, foxes, coyotes, etc.;

(3) Any establishment or person selling warmblooded animals (except birds, and laboratory rats and mice) for research or exhibition purposes; and

(4) Any establishment wholesaling any animals (except birds, rats and mice).

Sanitize means to make physically clean and to remove and destroy, to the maximum degree that is practical, agents injurious to health.

Secretary means the Secretary of Agriculture of the United States or his representative who shall be an employee of the Department.

Sheltered housing facility means a housing facility which provides the animals with shelter; protection from the elements; and protection from temperature extremes at all times. A sheltered housing facility may consist of runs or pens totally enclosed in a barn or building, or of connecting inside/outside runs or pens with the inside pens in a totally enclosed building.

Standards means the requirements with respect to the humane housing, exhibition, handling, care, treatment, temperature, and transportation of animals by dealers, exhibitors, research facilities, carriers, intermediate handlers, and operators of auction sales as set forth in Part 3 of this subchapter.

State means a State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or any other territory or possession of the United States.

Transporting device means an interim vehicle or device, other than man, used to transport an animal between the primary conveyance and the terminal facility or in and around the terminal facility of a carrier or intermediate handler.

Transporting vehicle means any truck, car, trailer, airplane, ship, or railroad car used for transporting animals.

Veterinary Services means the office of the Animal and Plant Health Inspection Service to which responsibility is assigned for the performance of functions under the Act.

Veterinary Services representative means any inspector or other person employed by the Department who is

responsible for the performance of a function under the Act.

Weaned means that an animal has become accustomed to take solid food and has so done, without nursing, for a period of at least 5 days.

Wild animal means any animal which is now or historically has been found in the wild, or in the wild state, within the boundaries of the United States, its territories, or possessions. This term includes, but is not limited to, animals such as: Buffalo, deer, skunk, opossum, raccoon, armadillo, coyote, squirrel, fox, wolf.

Wild state means living in its original, natural condition; not domesticated.

Zoo means any park, building, cage, enclosure, or other structure or premise in which a live animal or animals are kept for public exhibition or viewing, regardless of compensation.

Done at Washington, DC, this 24th day of March, 1987.

B.G. Johnson,
Deputy Administrator, Veterinary Services.
[FR Doc. 87-6832 Filed 3-30-87; 8:45 am]
BILLING CODE 3410-34-M

9 CFR Part 2

[Docket No. 84-010]

Animal Welfare Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend Part 2—"Regulations" to comply with the amendments to the Animal Welfare Act (7 U.S.C. 2131 *et seq.*) ("ACT") contained in Pub. L. 99-198, "The Food Security Act of 1985," enacted December 23, 1985. This document also proposes to amend, revise, and expand the regulations in order to update the regulations and standards based on our experience enforcing the Act and the regulations and standards. We have added new sections on (1) Institutional Animal Care and Use Committees; (2) Attending Veterinarians and Veterinary Care; (3) Holding Facilities; and (4) Handling to comply with the requirements of the 1985 amendments to the Act. These requirements will apply to all regulated animals and thus obviate the need to repeat them in each section of Part 3. Other sections in the regulations have been revised in content and/or format so as to aid the public in better understanding and using the regulations for the humane care, treatment, handling, and transportation of regulated animals.

DATE: Written comments must be received on or before June 1, 1987.

ADDRESS: Written comments concerning this proposal should be submitted to Dr. R.L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that they respond to Docket Number 86-010. Written comments received may be inspected at Room 756 of the Federal Building between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, telephone (301) 436-7833.

SUPPLEMENTARY INFORMATION:

Background

This document proposes to amend, revise, and expand the "Regulations" contained in 9 CFR 2.1 through 2.132. These regulations pertain to the licensing and registration of facilities; the recordkeeping and identification of animals; holding periods and facilities; inspections; Institutional Animal Care and Use Committees; Adequate Veterinary Care; and other areas relating to the humane care, handling, treatment, and transportation of animals. These changes are promulgated under the authority of the Animal Welfare Act, as amended (7 U.S.C. 2131 *et seq.*) including some specific new requirements mandated by the 1985 amendments to the Act. The Act requires the Department to promulgate regulations and standards governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers. Such standards and regulations must include minimum requirements with respect to handling, housing, feeding, sanitation, veterinary care, the use of pain relieving drugs, exercise for dogs, recordkeeping, and other matters specified in section 13 of the Act (7 U.S.C. 2143) as amended.

These proposed regulations contain a general rewriting and reorganization of the current regulations based on our experience in enforcing the Act. These proposed regulations also contain the regulations required by the 1985 amendments to the Act, including regulations setting forth the responsibilities of the Institutional Animal Care and Use Committee; requirements for Committee approval of research protocols; training by research facilities; use of pain relieving drugs;

and inspection of animal use areas by the Committee.

Licensing

Section 2.1 sets forth the requirements and application procedure for licensing under the Act. To be licensed, dealers and exhibitors must agree to abide by the regulations and standards. A licensee's failure to comply with these requirements may subject him to civil penalties and a license suspension or revocation following formal legal proceedings. The Department, therefore, proposes to require licensees to be at least 18 years of age to avoid any problems that might arise in attempting to enforce the Act against a minor.

The Department proposes that applicants and licensees must provide a valid mailing address through which they can be reached at all times, and a valid premise's address where animals, animal facilities, equipment, and records can be inspected for compliance with the regulations and standards. In the past, many licensees have failed to provide an accurate and current address for contact and inspections. This has resulted in automatic termination of their license as they could not be contacted at renewal time. This change is intended to facilitate enforcement and to prevent the situation of someone "unknowingly" operating without a license. As before, if an applicant or licensee operates in more than one State, they must apply for a license in the State in which they have their principal place of business. Additionally, all premises or sites where such person operates or keeps animals must be indicated on the application form. The Department also proposes to increase the application fee from \$5 to \$10.

Sections 2 and 3 of the Act allow for certain exemptions from licensing. This proposal sets forth those persons exempted from licensing and defines the criteria a dealer must meet to be exempt from licensing. In previous years, the Department licensed animal auction sales where dogs or cats were sold but did not license auction sales that sold animals other than dogs or cats. The 1976 amendments to the Act changed the definition of a "dealer" to include those persons who negotiate the purchase or sale of animals in commerce. This definition includes brokers and operators of auction sales as dealers under the Act. Although such persons do not usually take physical possession of the animals and do not usually have holding facilities for animals, they are required to keep records and comply with the regulations and standards. The effect of this change in the definition of a dealer has not